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**IN THE
Supreme Court of the United States**

OCTOBER TERM, 1969

No. 25

LELIA MAE SANKS, NEE JONES, et al Appellants

vs.

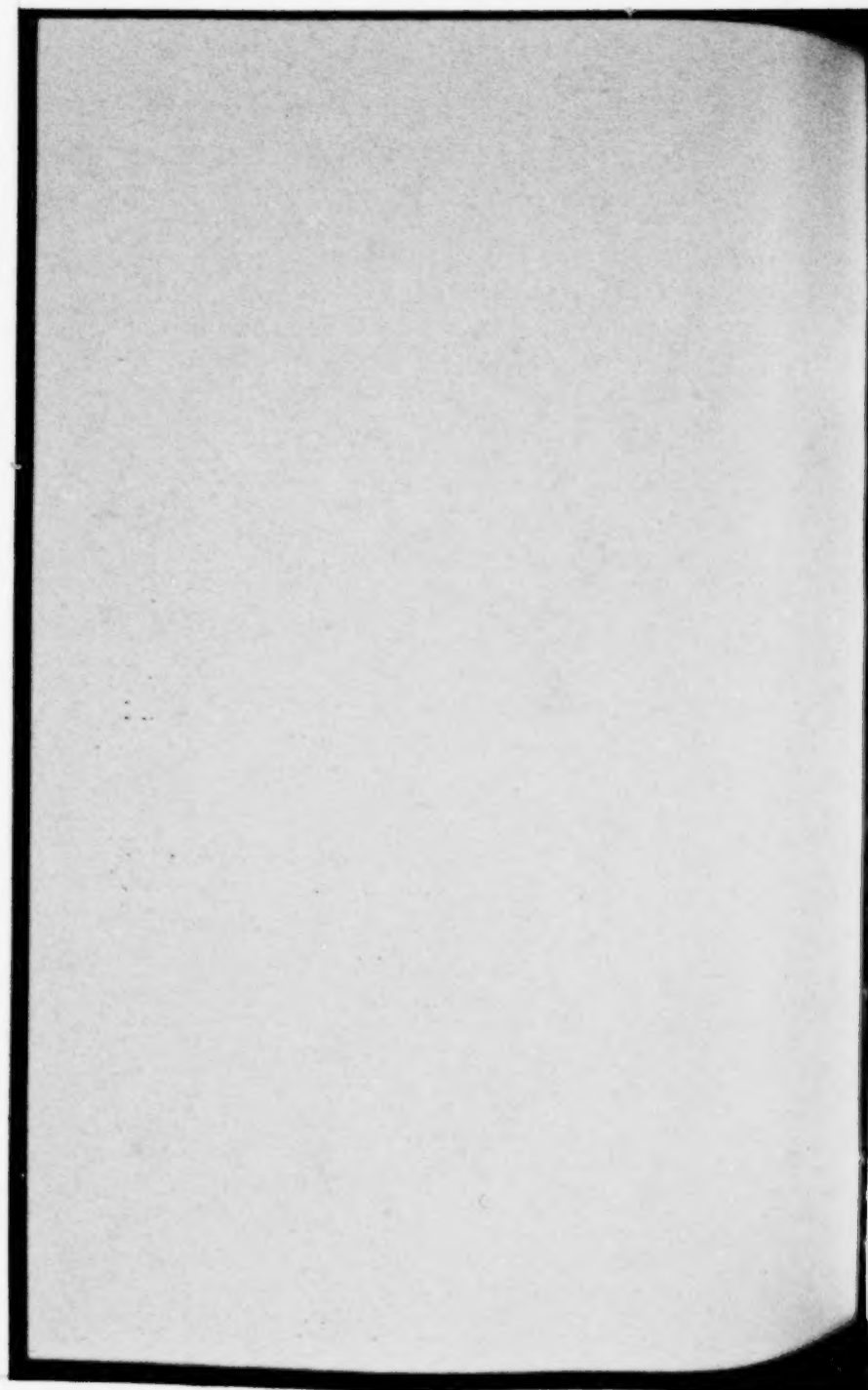
STATE OF GEORGIA, et al, Appellees

**ON APPEAL FROM THE SUPREME COURT OF THE
STATE OF GEORGIA**

**THE LEGAL AID OFFICE OF SAVANNAH,
INC. BRIEF AMICUS CURIAE ON
BEHALF OF APPELLANTS**

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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1969

No. 266

LELIA MAE SANKS, NEE JONES, et al *Appellants*

vs.

STATE OF GEORGIA, et al, *Appellees*

**ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF GEORGIA**

**MOTION FOR LEAVE TO FILE A BRIEF AMICUS
CURIAE BY THE LEGAL AID OFFICE OF
SAVANNAH, INC., ON BEHALF OF
APPELLANTS**

The Legal Aid Office of Savannah, Inc., respectfully moves for leave to file the attached Brief Amicus Curiae in support of the Appellants in the above-styled cause. Consent has been requested and received from all counsel.

The Legal Aid Office of Savannah, Inc. is an organization whose purpose is to represent clients in civil matters where such clients' income falls within speci-

fied eligibility requirements, with certain specified exceptions. Landlord/tenant matters are included in the type cases handled. The organization is funded under the provisions of the Economic Opportunity Act and by local contributions, primarily from the United Community Services of Chatham County, Georgia. The area served by the organization is all of Chatham County Georgia, which has a population in excess of 175,000. Included in this population are many poor people who fall within the eligibility requirements of the Legal Aid Office of Savannah, Inc. Many of these clients have landlord/tenant problems and those problems have become more acute in recent years due in part to the establishment in Chatham County, Georgia of Hunter Army Air Field which is used for training helicopter pilots by the Army. The military personnel are for the most part temporary residents and do not, as a general rule, purchase homes; but rent homes in Chatham County during their assignment at Hunter Army Air Field. This has created a shortage of housing in Chatham County and poor tenants who have been evicted from their homes have great difficulty in securing housing.

In 1968, 1,620 dispossessory warrants were filed in Chatham County, Georgia. Of this number only six bonds were posted.

The Courts of Chatham County do not apply the same bond requirements. A tenant posting a bond under the provisions of Georgia Code Section 61-303 in the City Court of Savannah is required to post a bond in the amount double the alleged sum owed at the time the bond is posted. The Municipal Court of Savannah requires an open bond covering the amount of any

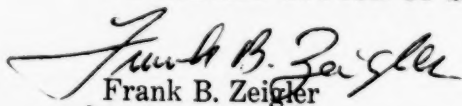
judgment that may be rendered against the tenant. In the absence of a bond, the tenant is evicted regardless of any defenses he may have to the warrant.

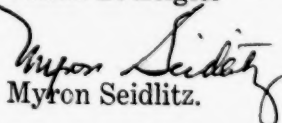
The bond requirements cannot be met by many indigent tenants having legitimate defenses to the warrant and by reason of their indigency are denied equal access to the courts. Movant desires to file the attached brief since indigent tenants in Chatham County, Georgia, are similarly situated and have the same problems as the indigent tenants in this case.

WHEREFORE, it is respectfully requested that this Motion for Leave to File a Brief Amicus Curiae be granted and the views expressed in that brief be considered by this Honorable Court.

Respectfully submitted,

LEGAL AID OFFICE OF SAVANNAH, INC.


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**IN THE
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1969

No. 266

LELIA MAE SANKS, NEE JONES, et al *Appellants*

vs.

STATE OF GEORGIA, et al, *Appellees*

**ON APPEAL FROM THE SUPREME COURT OF
THE STATE OF GEORGIA**

**BRIEF AMICUS CURIAE ON BEHALF OF
APPELLANTS**

INTEREST OF MOVANT

As stated in the preceding Motion, Movant is engaged in the representation of indigent clients in landlord/tenant proceedings within Chatham County, Georgia. Similar to the case in Atlanta, tenants in Chatham County, Georgia, experience great difficulty defending dispossessory proceedings due to the requirements of Georgia Code Section 61-303, requiring a bond as a prerequisite for arresting the proceedings, and Georgia Code Section 61-305, providing for double rent should the tenant not prevail. Because of their indigency they are unable to post the bond and are therefore denied equal access to the courts with those able to do so. The outcome of this case will greatly affect the ability of indigent tenants in Chatham County, Georgia, to gain access to the courts when they have legitimate defenses to dispossessory proceedings. For this reason, this case

is of deep interest to indigent tenants in Chatham County, Georgia. They are in accord with the appellants in this case and consider it important to their well-being that this Court sustain the position of appellants.

This amicus curiae does not intend to argue all the matters which can be reasonably anticipated to be fully argued in the brief for the appellees but it is intended to argue here matters of vital interest to indigent tenants in Chatham County, Georgia, who are denied access to the courts for the purpose of presenting defenses to dispossession proceedings due solely to their indigency.

ARGUMENT

Requirements of bond and assessment of double damages denies indigent tenants access to the Courts and violates Constitutional guarantees of due process and equal protection of the law.

The requirement of a bond as a prerequisite to the arrest of dispossessory proceedings by the tenant denies equal access to the courts by indigent tenants and violates the due process and equal protection clauses of the Federal Constitution and related State provisions.

The Georgia Statutes involved are Georgia Code Sections 61-303 and 61-305 which provide as follows:

61-303. ARREST OF PROCEEDINGS BY TENANT: COUNTER-AFFIDAVIT AND BOND. The tenant may arrest the proceedings and prevent the removal of himself and his goods from the land by declaring on oath that his lease or term of rent has not expired; and that he is not holding possession of the premises over and beyond his term, or that the rent claimed is not due, or that he does not hold the premises either by lease, or rent, or at will, or by sufferance, or otherwise, from the person who made the affidavit on which the warrant issued, or from anyone under whom he claims the premises, or from anyone claiming the premises under him: Provided, such tenant shall at the same time tender a bond with good security, payable to the landlord, for the payment of such sum, with costs, as may be recovered against him on the trial of the case.

61-305. DOUBLE RENT AND WRIT OF POSSESSION, WHEN—If the issue specified in the preceding section shall be determined against the tenant, judgment shall go against him for double the rent

reserved or stipulated to be paid, or if he shall be a tenant at will or sufferance, for double what the rent of the premises is shown to be worth, and such judgment in any case shall also provide for the payment of future double rent until the tenant surrenders possession of the lands or tenements to the landlord after an appeal or otherwise; and the movant or plaintiff shall have a writ of possession, and shall be by the sheriff, deputy, or constable placed in full possession of the premises.

Equal access to the courts is among the most cherished human rights in our republic. The concept of equal justice to all is not limited to those persons able to meet prerequisites of an economical nature before being able to assert valid defenses. In order to insure justice for all, it is essential that persons of every economic status be allowed to assert defenses to actions brought against them. The tenants in this case are attempting to arrest dispossessory proceedings against them without complying with provisions of Georgia Code Section 61-303, requiring the posting of a bond in order to arrest such proceedings, due to their indigency and inability to obtain a surety on their bond. They contend that they have defenses to the action which they are prevented from asserting because of the bond provision with which they are unable to comply. The Fifth and Fourteenth Amendments to the United States Constitution and related provisions of the Georgia Constitution codified as Sections 2-102, 2-103 and 2-104 (Article I, Paragraphs 2, 3, and 4 of the Constitution of the State of Georgia) guarantees due process and equal protection of the laws to all citizens.

Amendment V United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment

or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV United States Constitution

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Paragraph II

Constitution of State of Georgia

Code Sec. 2-102. Protection to person and property is the paramount duty of government, and shall be impartial and complete.

Article I, Paragraph III

Constitution of State of Georgia

Code Sec. 2-103. No person shall be deprived of life, liberty, or property, except by due process of law.

Article I, Paragraph IV

Constitution of State of Georgia

Code Sec. 2-104. No person shall be deprived of the right to prosecute or defend his own cause in any of

the courts of this State, in person, by attorney, or both.

The requirement of the bond in this case violates the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution and the related provisions of the Georgia Constitution in that access to the courts are denied indigent tenants, thereby prohibiting them from asserting defenses they would have and be able to assert if they had the economic means of so doing.

The provisions of Georgia Code Section 61-303 are further objectionable because the last paragraph, providing for such bond, is ambiguous and not uniformly applied in all courts of this state. Due to the wording of this provision the tenant is required to post a bond in one amount in one court and another amount in another court within the State of Georgia and indeed within the same county. The bond provision is enforced differently by the two courts handling the great majority of dispossessory proceedings in Chatham County. One court has construed the provision as one which requires a bond double the amount of the money claimed by the landlord at the time of the filing of his affidavit. Another court in the same county has construed the provision as being one which requires an open type bond, which provides for any sum which may be recovered against the tenant in the proceedings. The bond requirement in Georgia is applied differently to different persons under similar circumstances. All laws must be uniformly applied and the failure to do is a denial of equal protection of the law.

The tenant is probably the most disadvantaged con-

sumer in America, particularly in Georgia, where the bond requirement and threat of double damages virtually excludes him from presenting his defense. He is denied relief in equity in Georgia on the grounds that the statute, Georgia Code Section 61-303, provides a complete and adequate remedy against dispossessory proceedings, and the inability of the tenant because of poverty to give the required bond affords no ground for equitable interference. **Flynn et al vs. Merck, et al**, 204, Ga., 420, Page 424. (49 SE 2d 892). The Georgia court stated further in that case at page 425, "If an injury is sustained compensation therefor as damages in a suit at law would be an adequate remedy."

The poor tenant in Georgia is told that he has an adequate remedy at law in that he has the right to post bond and thereby arrest the proceedings. In the event he is unable, due to poverty to post such bond, he is denied access to the court and is told that resort to a suit for damages is adequate. This philosophy changes, however, when the aggrieved tenant is a person of means and able to post bond as required. In the case of **Ward v. Walker**, 222 Ga. 451 (151 SE 2d 228), the tenant did post bond and filed the required affidavit to arrest the proceedings. The landlord, however, manually and without any legal process, took possession of the premises. Injunction was sought by the tenant to restrain the defendant from continuing to exclude him from possession. In that case, the Georgia Supreme Court ruled that injunction would lie and that equity would enjoin the landlord from perpetrating the wrong to which the plaintiff was deprived of the full (emphasis ours) protection of a statute of the state. The court further stated in that case at Page 453:

"Equity will enjoin the defendant from perpetrating a wrong to which the plaintiff is deprived of the full protection of a statute of the state, although the plaintiff may still have some legal redress not as adequate and complete as that of which the defendant deprives him."

"A remedy at law, to exclude appropriate relief in equity, must be complete and the substantial equivalent of the equitable relief. It is not enough that there is a remedy at law. It must be plain and adequate, or, in other words, as practical and as efficient to the ends of justice and its prompt administration as the remedy in equity." **Ward v. Walker**, 222 Ga. 451, 453. (151 SE 2d 228).

The **Ward** case exemplifies the difference between a tenant with sufficient means to post the required bond and file the counter affidavit required by Georgia Code Section 61-303, and the defendant who is unable to post the required bond due to his poverty. The person who is unable to post a bond due to his poverty is said to have an adequate remedy at law by resort to a suit for damages. Recovery of damages as he might be able to prove is not a sufficient and adequate remedy at law to a tenant who has the means of posting the required bond but, nevertheless, is evicted of possession *vi et aris*. There can be little doubt that a different philosophy exists based solely on the person's ability to post the bond required by the Georgia Statute.

Next to food and clothing, a man's home is his most valuable commodity, yet he can be summarily evicted with only four days notice unless he can post the required bond; (Georgia Code Section 61-306 supp.) and even then, takes the risk of suffering double damages should he not prevail. The assessing of double

damages has been upheld by the Georgia courts. See **Goff vs. Cooper**, 110 Ga. App. 339, (138 SE 2d 449), holding that double damages are assessed from the date demand for the premises is made. On the other hand, the tenant in Georgia enjoys none of the advantages given the landlord. Should he prevail, the tenant does not collect double damages. Should he succeed in posting bond, the landlord is not required to give bond to insure recovery of damages against him.

The requirement of bond as a prerequisite for staying the eviction places the tenant at a disadvantage in all phases of the landlord/tenant relationship and is not restricted to the time when rent becomes in arrears. The indigent tenant, who cannot post bond, and thereby, is denied the opportunity to assert legal defenses to eviction, is placed in a distinct disadvantage in other lease disputes.

An example of the tenant's difficulties is a covenant calling for repairs by the landlord. Should the landlord fail to make repairs as covenanted, the tenant has no remedy similar to dispossessory proceedings. In Georgia he is even denied a lien on the property for the repairs. **West View Corporation v. Thunderbolt Yacht Basin, Inc., et al.** 208 Ga. 93 at Page 98. (65 SE 2d 167):

"We know of no statute in this state which gives the tenant a lien for improvements." 208 Ga. 93, (65 SE 2d 167), **West View Corporation v. Thunderbolt Yacht Basin, Inc., et al.**

Such a tenant facing a landlord who is required under the terms of the lease to make repairs but fails to do so is placed in an impossible position. Georgia law renders the landlord liable for improvements placed on the

premises by his consent. **Georgia Code Section 61-111; West View Corporation v. Thunderbolt Yacht Basin, Inc., et al.** 208 Ga. 93. (65 SE 2d 167). Yet the landlord who does not make agreed repairs suffers no penalties and is in no way prevented from defending any action brought by the tenant.

It is contended that the matter of compliance with lease covenants, such as those calling for repairs, relate directly to the requirement of a bond and a threat of double damages. The landlord can afford to sit back and breach his covenants without fear of penalty while the tenant is forced to abandon his home, even though he has a good defense, unless he is financially able to comply with the stringent requirements of the Georgia bond provision. This is a constant threat to the tenant and denies him due process of law and equal protection of the laws. It is submitted that all tenants, regardless of their financial condition, should be afforded access to the court to assert their legitimate defenses to dispossessory warrants filed by landlords. Denial of his remedy renders his substantive guarantees meaningless.

SUMMARY

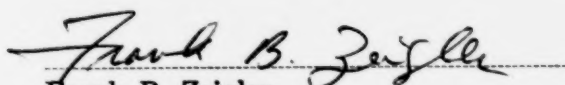
We make no contention that the landlord is not entitled to possession of his premises when the tenant has breached his agreement to pay rent. We do strongly contend, however, that constitutional guarantees of due process and equal protection of the laws made applicable to the states by the Fourteenth Amendment to the United States Constitution, are denied when a tenant is denied access to the courts due solely to his inability because of his poverty, to post a bond as a prerequisite to asserting his legal defenses.

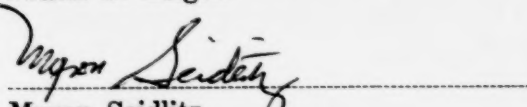
Upholding the position of the Atlanta Legal Aid Society, Inc. in the **Sanks** case, will give impoverished tenants equal access to the courts and for this reason, this amicus curiae earnestly requests that their position be affirmed and the ruling by the Georgia Supreme Court in that case be reversed.

CONCLUSION

The requirements of bond from a tenant as a condition precedent to asserting a defense to a dispossessory proceeding, and assessment of double damages, is so oppressive that it denies him a remedy in court and amounts to a denial of Due Process of Law and Equal Protection of law guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and by Code Section 2-102, 2-103 and 2-104 of the Georgia Constitution. Article I, Paragraphs 2, 3, and 4, Ga. Const.)

Respectfully submitted,


Frank B. Zeigler


Myron Seidlitz

Attorneys for
The Legal Aid Office of Savannah, Inc.

CERTIFICATE OF SERVICE

I, **FRANK B. ZEIGLER**, of counsel for the above mentioned Amicus Curiae, certify that I have this day served:

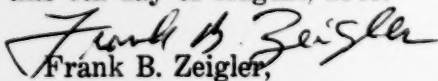
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attorneys in the foregoing matter representing all the parties that are required to be served, each with a copy of this Motion for leave to File a Brief Amicus Curiae and a copy of the attached Brief Amicus Curiae by depositing in the United States mail copies of same in properly addressed envelopes with adequate postage thereon.

Done this 6th day of August, 1969.



Frank B. Zeigler,
of Counsel for
The Legal Aid Office of Savannah, Inc.

Room 100
Realty Building
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No. 28

(state of Georgia)

Joiner in brief of appellee, Housing of City of
Atlanta, filed on Sept. 11, 1969
(not printed)